

2005 DRAFTING REQUEST

Bill

Received: **09/27/2004**

Received By: **gmalaise**

Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget 6-2288**

By/Representing: **Rhodes**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Children - child welfare**

Extra Copies:

Submit via email: **NO**

Pre Topic:

DOA:.....Rhodes, BB0049 -

Topic:

Statewide automated child welfare information system confidentiality

Instructions:

See Attached--redraft 2003 SB 487 relating to confidentiality of information in SACWIS

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 09/27/2004	kfollett 09/30/2004		_____			
/1			rschluet 09/30/2004	_____	lnorthro 09/30/2004		
/2	gmalaise 11/22/2004	kfollett 11/24/2004	pgreensl 11/29/2004	_____	lemery 11/29/2004		

FE Sent For:

<END>

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/?	gmalaise	11/15/04 9/30					

FE Sent For:

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a 30 4
<END>

BB0040

^{5 7}
~~2003-05~~ Budget Bill Statutory Language Drafting Request

- Topic: WiSACWIS Confidentiality
- Tracking Code:
- SBO team: Health & Insurance
- SBO analyst: Rhodes
 - Phone: 6-2288
 - Email: dennis.rhodes@doa.state.wi.us
- Agency acronym: DHFS
- Agency number: 6-9364

DHFS

Department of Health and Family Services
2005-2007 Biennial Budget Statutory Language Request
September 22, 2004

WiSACWIS Confidentiality

Current Language

s.48.78 (2)(a)

Proposed Change

Add language as contained in 2003 Senate Bill 487

Effect of the Change

This change adds language that specifically allows Department of Health and Family Services, a county department of social services, a licensed child welfare agency, or a licensed day care center to enter confidential information into the statewide automated child welfare information system (WiSACWIS) and to access the information maintained in WiSACWIS if that information is necessary for the organization to perform its duties or coordinate the delivery of services to a client under the Children's Code, the Juvenile Justice Code, or the Mental Health Act.

Rationale for the Change

Under current law, information received by the Department of Health and Family Services (DHFS), the Department of Corrections (DOC), a county department of social services, a licensed child welfare agency, or a licensed day care center about an individual who is in the care or legal custody of that agency is confidential and may not be disclosed except under certain exceptions. Similarly, treatment records of an individual who is receiving or has received services for mental illness, developmental disabilities, alcoholism, or drug dependence that are maintained by DHFS, a county department of community programs or developmental disabilities, or a treatment facility, are also confidential, but may also be released under certain circumstances.

Desired Effective Date:	Upon passage of the Budget Bill
Agency:	DHFS
Agency Contact:	Nicole Groth
Phone:	266-9364

Budget

2003 - 2004 LEGISLATURE

-0296/1

LRB-2993/1

GMM:jdj

2003

kgb

2003 SENATE BILL 487

February 24, 2004 - Introduced by Senator ROESSLER, cosponsored by Representative KESTELL. Referred to Committee on Health, Children, Families, Aging and Long Term Care.

Do Not Gen

The budget

- 1 AN ACT ~~to create~~ 48.78 (2) (h), 51.30 (4) (b) 27. and 938.78 (2) (h) of the statutes;
2 relating to: ~~permitting confidential information to be entered into, and~~
3 ~~accessed from, the statewide automated child welfare information system.~~

Analysis by the Legislative Reference Bureau

Under current law, information received by the Department of Health and Family Services (DHFS), the Department of Corrections, DOC, a county department of human services or social services, a licensed child welfare agency, or a licensed day care center (collectively "agency") about an individual who is in the care or legal custody of the agency is confidential and may not be disclosed, except under certain exceptions. Similarly, under current law, treatment records concerning an individual who is receiving or who has received services for mental illness, developmental disabilities, alcoholism, or drug dependence that are maintained by DHFS, a county department of community programs or developmental disabilities services, or a treatment facility are confidential and may be released without the informed consent of the individual who is the subject of the record (subject individual) only under certain circumstances.

This bill permits an agency to enter information received about an individual in its care or legal custody, and a person maintaining treatment records to enter information concerning a subject individual, into the statewide automated child welfare information system (generally referred to as "WISACWIS"). The bill also permits DHFS; DOC; a county department of human services, social services, community programs, or developmental disabilities services (county department); or

anal. title: head → HEALTH AND HUMAN SERVICES

anal. title: sub → CHILDREN

SENATE BILL 487

any other organization that has entered into an information sharing and access agreement with DHFS, DOC, or a county department and that has been approved for access to WISACWIS by DHFS to have access to information concerning a client under the Children's Code, the Juvenile Justice Code, or the Mental Health Act that is maintained on WISACWIS, if necessary to enable DHFS, DOC, the county department, or other organization to perform its duties under the Children's Code, the Juvenile Justice Code, or the Mental Health Act or to coordinate the delivery of services under the Children's Code, the Juvenile Justice Code, or the Mental Health Act to a client.

~~For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.~~

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 48.78 (2) (h) of the statutes is created to read:

2 48.78 (2) (h) Paragraph (a) does not prohibit an agency from entering the
3 content of any record kept or information received about an individual in its care or
4 legal custody into the statewide automated child welfare information system
5 established under s. 46.03 (7) (g). Paragraph (a) also does not prohibit a county
6 department under s. 46.215, 46.22, 46.23, 51.42, or 51.437, the department of health
7 and family services, the department of corrections, or any other organization that
8 has entered into an information sharing and access agreement with one of those
9 county departments or departments and that has been approved for access to the
10 statewide automated child welfare information system by the department of health
11 and family services from having access to information concerning a client of that
12 county department, department, or organization under this chapter or ch. 51 or 938
13 that is maintained in the statewide automated child welfare information system, if
14 necessary to enable the county department, department, or organization to perform
15 its duties under this chapter or ch. 51 or 938 or to coordinate the delivery of services
16 under this chapter or ch. 51 or 938 to the client. Before entering any information

SENATE BILL 487

1 about an individual into the statewide automated child welfare information system,
2 the agency entering the information shall notify the individual that the information
3 entered may be disclosed as provided in this paragraph.

4 **SECTION 2.** 51.30 (4) (b) 27. of the statutes is created to read:

5 51.30 (4) (b) 27. For the purpose of entering information concerning the subject
6 individual into the statewide automated child welfare information system
7 established under s. 46.03 (7) (g). A county department under s. 46.215, 46.22, 46.23,
8 51.42, or 51.437, the department of health and family services, the department of
9 corrections, or any other organization that has entered into an information sharing
10 and access agreement with one of those county departments or departments and that
11 has been approved for access to the statewide automated child welfare information
12 system by the department of health and family services may have access to
13 information concerning a client of that county department, department, or
14 organization under this chapter or ch. 48 or 938 that is maintained in the statewide
15 automated child welfare information system, if necessary to enable the county
16 department, department, or organization to perform its duties under this chapter or
17 ch. 48 or 938 or to coordinate the delivery of services under this chapter or ch. 48 or
18 938 to the client. Before entering any information about an individual into the
19 statewide automated child welfare information system, the person entering the
20 information shall notify the individual that the information entered may be disclosed
21 as provided in this subdivision.

22 **SECTION 3.** 938.78 (2) (h) of the statutes is created to read:

23 938.78 (2) (h) Paragraph (a) does not prohibit an agency from entering the
24 content of any record kept or information received about an individual in its care or
25 legal custody into the statewide automated child welfare information system

SENATE BILL 487

1 established under s. 46.03 (7) (g). Paragraph (a) also does not prohibit a county
2 department under s. 46.215, 46.22, 46.23, 51.42, or 51.437, the department of health
3 and family services, the department of corrections, or any other organization that
4 has entered into an information sharing and access agreement with one of those
5 county departments or departments and that has been approved for access to the
6 statewide automated child welfare information system by the department of health
7 and family services from having access to information concerning a client of that
8 county department, department, or organization under this chapter or ch. 48 or 51
9 that is maintained in the statewide automated child welfare information system, if
10 necessary to enable the county department, department, or organization to perform
11 its duties under this chapter or ch. 48 or 51 or to coordinate the delivery of services
12 under this chapter or ch. 48 or 51 to the client. Before entering any information about
13 an individual into the statewide automated child welfare information system, the
14 agency entering the information shall notify the individual that the information
15 entered may be disclosed as provided in this paragraph.

16 (END)

Malaise, Gordon

From: Malaise, Gordon
Sent: Monday, November 22, 2004 4:01 PM
To: Rhodes, Dennis
Subject: RE: Re: WISACWIS Confidentiality Statutory Language

Dennis:

Deleting day care centers from s. 48.78 (1) would eliminate coverage of the confidentiality statute over day care centers altogether. That outcome would probably not be intended.

Accordingly, I will redraft 05-0296/1 to delete "agency" from page 2, line 2, and from page 3, line 1, and to substitute therefor "the department, a county department, or a licensed child welfare agency."

Gordon

-----Original Message-----

From: Rhodes, Dennis
Sent: Monday, November 22, 2004 3:13 PM
To: Malaise, Gordon
Subject: FW: Re: WISACWIS Confidentiality Statutory Language

Gordon,

One comment from John Tuohy on WiSACWIS confidentiality. He says child welfare agencies under contract (as in BMCW) enter information into WiSACWIS routinely and other counties might also have such an arrangement with a non-profit organization. However, day care agencies are out of the picture entirely. Can we change 48.78(1) or define what we mean by agency differently within this draft?

-----Original Message-----

From: Groth, Nicole
Sent: Monday, November 22, 2004 2:47 PM
To: Rhodes, Dennis
Subject: Fwd: Re: WISACWIS Confidentiality Statutory Language

Dennis,
John Tuohy sent me this response. I am still waiting to hear from Mark Mitchell.

>>> John Tuohy 11/22/04 10:29AM >>>
Hi Nicole. Check with Mark M on this.

As far as child welfare agencies entering information into WiSACWIS, we have child welfare agencies doing work in WiSACWIS under contract to BMCW and the adoption program. Counties may also have contractual arrangements where they have given a child welfare agency contractor access. But I can't imagine a scenario where a child day care center should have access to the system.

>>> Nicole Groth 11/19/04 08:29AM >>>

John and Mark:
I had forwarded a request to LRB to take out the reference to day care centers and child welfare agencies from the analysis section of the draft (see following emails regarding this issue). This raised the following concerns from LRB regarding the language in the bill.

From Gordon Malaise, LRB:
"Deleting child welfare agencies and day care centers from the analysis because those agencies do not have access to SACWIS raises a substantive

. question concerning the body of the draft.

Specifically, at page 2, line 2, the draft permits an "agency," which is defined under current law to include a child welfare agency or a day care center, to enter information into SACWIS. Is this correct? Can child welfare agencies and day care centers, which are clearly prohibited from accessing information from SACWIS, enter information into the system? Or is the system entirely a creature of the state and the counties both for purposes of accessing and entering information?

If so, then "agency" at page 2, line 2, needs to be clarified. For example, the specific agencies permitted to enter information into SACWIS, e.g., DHFS and the county departments, could be enumerated at that location. Run this question by DHFS and let me know."

I would appreciate it if you could look them over and let me know what you think. Thanks for your help.

>>> Fredi-Ellen Bove 10/20/04 09:16AM >>>

More info. on the issue.

>>> John Tuohy 10/20/04 08:33AM >>>

The budget bill draft is the exact same language that was introduced last session as SB 487. The concern Diane is raising is not with the actual statutory language, but with the LRB analysis. It is the first sentence of the LRB analysis that is confusing, not the bill itself. I think the LRB drafter intended the first sentence of the analysis to provide context for the bill since confidentiality requirements that apply to counties also apply to other agencies. But the changes made by the bill are only applicable to counties. Thus, we could ask LRB to change the analysis to delete references to child care centers and child welfare agencies.

>>> Diane Waller 10/19/04 06:06PM >>>

This is good news and bad news. I'm glad that we do not allow day care centers access to WiSACWIS. However, this is the language that is included in our DHFS Budget request in the section Statutory Language Requests Related to DINS. We need to get this corrected before it makes it into the Budget. So I'm including Fredi in on this email so she sees the problem that we've identified and can help/tell us how to get it corrected.

Diane Waller, Director
Area Administration
DHFS/OSF

>>> Mark Mitchell 10/19/04 12:47PM >>>

Hi, Diane. I don't know why this language is in the budget proposal. There is no way a day care center would have access to WiSACWIS. The only CPAs that might have access are those that are part of BMCW (e.g., LSS, CSSW). Beyond that, this language doesn't make sense to me.

--Mark

>>> John Tuohy 10/12/04 12:38PM >>>

Mark - Can you respond to Diane Waller's questions about the confidentiality legislation?

The proposed budget legislation is the same as SB 487 from last session that DCFS pursued at the request of counties to provide clear statutory authority for MH and other information to be entered into WiSACWIS.

I share Diane's question about why the LRB analysis identifies child welfare agencies and day care centers as being affected by the legislation. The actual language focuses on county departments and agencies that have a WiSACWIS user agreement with a county department. There are confidentiality

provisions applicable to child welfare agencies and day care centers, but this bill does not affect those types of agencies. So should the first sentence of the LRB analysis be changed?

>>> Diane Waller 10/12/04 10:45AM >>>

Our DHFS Budget Proposal includes a Stat Language change related to WiSACWIS Confidentiality "to allow DHFS, a county, a licensed CW agency, or a licensed day care center to enter confidential information into WiSACWIS and to access the information maintained by WiSACWIS if the information is necessary for the organization to perform its duties or coordinate the delivery of services to a client under the Children's Code, the Juvenile Justice Code or the MH act."

Do CW agencies and licensed day care centers have access to WiSACWIS and can they enter info into the system? Counties haven't picked up yet on this proposed change in our budget, but when they do, I expect that those that were already concerned about confidentiality of info in WISACWIS will have even greater concerns. Can you give me more information on this proposed change so I am prepared if it comes up when I'm meeting with counties?

Diane Waller, Director
Area Administration
DHFS/OSF



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-0296/1

GMM:kjf:rs

1
2
RMR

DOA:.....Rhodes, BB0049 – Statewide automated child welfare information system confidentiality

Do Not Gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

or

CHILDREN

Under current law, information received by DHFS, DOC, a county department of human services or social services, a licensed child welfare agency, ~~or a licensed day care center~~ (collectively “agency”) about an individual who is in the care or legal custody of the agency is confidential and may not be disclosed, except under certain exceptions. Similarly, under current law, treatment records concerning an individual who is receiving or who has received services for mental illness, developmental disabilities, alcoholism, or drug dependence that are maintained by DHFS, a county department of community programs or developmental disabilities services, or a treatment facility are confidential and may be released without the informed consent of the individual who is the subject of the record (subject individual) only under certain circumstances.

This bill permits an agency to enter information received about an individual in its care or legal custody, and a person maintaining treatment records to enter information concerning a subject individual, into the statewide automated child welfare information system (generally referred to as “WISACWIS”). The bill also permits DHFS; DOC; a county department of human services, social services, community programs, or developmental disabilities services (county department); or any other organization that has entered into an information sharing and access

agreement with DHFS, DOC, or a county department and that has been approved for access to WISACWIS by DHFS to have access to information concerning a client under the Children's Code, the Juvenile Justice Code, or the Mental Health Act that is maintained on WISACWIS, if necessary to enable DHFS, DOC, the county department, or other organization to perform its duties under the Children's Code, the Juvenile Justice Code, or the Mental Health Act or to coordinate the delivery of services under the Children's Code, the Juvenile Justice Code, or the Mental Health Act to a client.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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SECTION 1. 48.78 (2) (h) of the statutes is created to read:

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department, county department, or licensed
child welfare agency

① the ~~agency~~ entering the information shall notify the individual that the information
2 entered may be disclosed as provided in this paragraph.

3 **SECTION 2.** 51.30 (4) (b) 27. of the statutes is created to read:

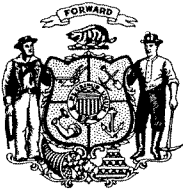
4 51.30 (4) (b) 27. For the purpose of entering information concerning the subject
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10 has been approved for access to the statewide automated child welfare information
11 system by the department of health and family services may have access to
12 information concerning a client of that county department, department, or
13 organization under this chapter or ch. 48 or 938 that is maintained in the statewide
14 automated child welfare information system, if necessary to enable the county
15 department, department, or organization to perform its duties under this chapter or
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20 as provided in this subdivision.

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4 county departments or departments and that has been approved for access to the
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6 and family services from having access to information concerning a client of that
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8 that is maintained in the statewide automated child welfare information system, if
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13 agency entering the information shall notify the individual that the information
14 entered may be disclosed as provided in this paragraph.

15 (END)



DOA:.....Rhodes, BB0049 – Statewide automated child welfare information system confidentiality

1 **AN ACT ...; relating to:** the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

CHILDREN

Under current law, information received by DHFS, DOC, a county department of human services or social services, or a licensed child welfare agency (collectively “agency”) about an individual who is in the care or legal custody of the agency is confidential and may not be disclosed, except under certain exceptions. Similarly, under current law, treatment records concerning an individual who is receiving or who has received services for mental illness, developmental disabilities, alcoholism, or drug dependence that are maintained by DHFS, a county department of community programs or developmental disabilities services, or a treatment facility are confidential and may be released without the informed consent of the individual who is the subject of the record (subject individual) only under certain circumstances.

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12 having access to information concerning a client of that county department,
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8 51.42, or 51.437, the department of health and family services, the department of
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10 and access agreement with one of those county departments or departments and that
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12 system by the department of health and family services may have access to
13 information concerning a client of that county department, department, or
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15 automated child welfare information system, if necessary to enable the county
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16 (END)